repeated. Applicants deny the Examiner's allegation that the obviousness type double patenting rejection and the obviousness rejection under 35 USC 103(a) are different from the rejection of anticipation under 35 USC 102 . It is submitted that the obviousness type double patenting rejection is different from the art-related rejection based on obviousness under 35 USC 103 and anticipation under 35 USC 102. The obviousness type double patenting rejection and the art-related rejections based on obviousness and anticipation are mutually exclusive. In making the obviousness type double patenting rejection, the Examiner is ascertaining that the reference on which this rejection is based is an obvious extension of the patented invention and based on the patent statues namely 35 USC 101 two inventions cannot be given for the same invention. Applicants accepted this obviousness type double patenting rejection and successfully overcame this rejection by filing a Terminal Disclaimer so that the duration of the instant application when patented will expire at the same time as the earlier case. Based on the intent of 35 USC 103, this conforms to a single patent for a single invention. Hence, applicants have given up a portion of the term of the patent in order to avoid this double patenting rejection. On balance, the applicants have given up a portion of the term of their its patent while the Examiner has given up the right to use this reference as a valid art reference against the instant invention. Both parties have agreed that the instant application is considered an obvious extension of the other. Hence, by the admission of the Examiner and the applicants that the instant application is an obvious type extension over of the prior art reference '747, the Examiner is now precluded from using this patent under the anticipation patent statue as the basis of a rejection for this application. Hence, for the reason set forth above, it is submitted that this rejection is improper and should be withdrawn.

The rejection of claims 1, 5-12, 18-20, 22-24, 26-28, 30, and 32-37, as being rejected under 35 USC 102(e) as being anticipated by or, in the alternative, under 35 USC 103(a) as being obvious over WO 02/083592 is traversed. This reference clearly does not disclose the present invention. It must be reiterated that this reference is in a non-analogous art to the art of the present invention. This reference is directed to a method of decreasing the viscosity of a mineral ore slurry while the instant invention is directed to a building material composition. The arguments set forth in the previous response of October 4, 2004 are herein repeated. It must be

reiterated that this reference does not disclose a binding material composed of cement or gypsum. Moreover, a person having an ordinary skill in the art armed with this reference would not be able to make or practice the building material of the instant invention. Hence, this reference does not make the instant invention obvious to a person skilled in the art.

For the reasons set forth above, it is submitted that this application is now in condition for allowance and prompt notification thereof is respectfully requested.

Respectfully submitted,

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